9-28-2017

City of ID Falls v. H-K Contractors, Inc. Respondent's Brief Dckt. 44886

IN THE SUPREME COURT OF THE STATE OF IDAHO

* * * * *

CITY OF IDAHO FALLS, an Idaho municipal corporation, Plaintiff-Appellant,

v.

H-K CONTRACTORS, INC., an Idaho corporation, Defendant-Respondent,

* * * * *

RESPONDENT'S BRIEF

*** * * * ***

Appeal from the District Court of the Seventh Judicial District for Bonneville County.
Honorable Joel E. Tingey, District Judge, presiding.

* * * * *

Randall D. Fife, Esq., and Michael A. Kirkham, Esq., residing at Idaho Falls, Idaho, for Appellant, City of Idaho Falls

B. J. Driscoll, Esq., residing at Idaho Falls, Idaho, for Respondent, H-K Contractors, Inc.

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STATEMENT OF THE CASE

Defendant/Respondent HK Contractors, Inc. ("HK"), largely agrees with the Plaintiff/Appellant City of Idaho Falls' ("City") Statement of the Case. However, HK writes to clarify a few items the City does not fairly represent from the record.

First, the City does not appeal from "an erroneous determination by the District Court that Idaho's governmental subdivisions are not part of the 'state.'"[1] More correctly, the City appeals from the District Court's application of the plain language of the statute of limitations found in Idaho Code Section 5-216 to bar the City's claims arising from a written contract.[2] The District Court concluded that Section 5-216 is unambiguous, and that redrafting the language as the City suggested would be improper.[3]

Second, the City states that it "performed all of its obligations" under the parties' Storm Drainage Agreement ("Agreement").[4] However, the City had no obligations under the Agreement.[5]

Third, the City implies that HK never provided the name of the "unnamed City official" that notified HK that the City was not interested in acquiring HK's property.[6] However, HK politely explained that then-City parks and recreation director David Christensen notified HK's then-president Brent Foster that the City was no longer interested in acquiring HK's property.[7]

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[1] See p. 1 of Appellant's Brief.
[2] See R. Vol. I., pp. 73-75.
[3] See R. Vol. I., pp. 73-75.
[4] See p. 1 of Appellant's Brief.
[5] See R. Vol. I., pp. 13-14.
[6] See p. 2 of Appellant's Brief.
[7] See R. Vol. I., p. 27.

ARGUMENT

I.

THE DISTRICT COURT PROPERLY DISMISSED THE CITY'S COMPLAINT BECAUSE THE CITY'S CLAIMS ARE BARRED BY THE PLAIN LANGUAGE OF IDAHO CODE SECTION 5-216 AND NO EXEMPTION APPLIES.

A. Standard Of Review.

In *McCabe v. Craven*, 145 Idaho 954, 956-957 (2008), this Court explained the proper standard of review from an order granting a motion to dismiss and applying a statute of limitations as follows:

> "In reviewing the district court's order granting the motion to dismiss, the standard of review is the same as that used in summary judgment…The standard of review on appeal from an order granting summary judgment is the same standard that is used by the district court in ruling on the motion…Summary judgment is appropriate only when the pleadings, depositions, affidavits and admissions on file show that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law."
>
> ….
>
> This Court freely reviews the legal issues related to the statute of limitations.

(Quotations and internal citations omitted.)

B. The Statute Of Limitations Is To Be Liberally Construed, While Exemptions To The Statute Of Limitations Are To Be Strictly Construed.

The District Court correctly identified the rule set forth by this Court that "'[t]he statute of limitations is general, is to be liberally construed, and must be applied in all cases where an exception is not specifically made. Statutes creating exemptions are to be strictly construed and

will not be extended by implication.'"[8] As explained below, the District Court adhered to this rule in applying the statute of limitations to the City's claims.

C. Idaho Code Section 5-216 Applies To Bar The City's Claims Arising From The Written Storm Drainage Agreement.

Idaho Code Section 5-216 imposes a five-year limitation period for "[a]n action upon any contract, obligation or liability founded upon an instrument in writing." Here, the District Court correctly determined that the City's claims for breach of contract and waste accrued on March 1, 2010, but the City did not file suit until November 22, 2016.[9] As the City's claims arise from the written Storm Drainage Agreement, the District Court correctly concluded that the statute of limitations in Section 5-216 applies to bar the City's claims unless the City proves its claims are exempt from the limitation.[10]

D. The Exemption In Section 5-216 For Claims Brought In The Name Or For The Benefit Of The State Does Not Apply To The Claims Brought By The City.

Idaho Code Section 5-216 provides an exemption from the five-year limitation period to actions on a written contract, stating in pertinent part, "The limitations prescribed by this section shall never apply to actions in the name or for the benefit of the state and shall never be asserted nor interposed as a defense to any action in the name or for the benefit of the state…"

The District Court thoughtfully analyzed this language in Section 5-216 and concluded that it did not exempt the City's claims from the statute of limitations. The District Court

[8] See R. Vol. I., p. 76 (quoting *Mendini v. Milner*, 47 Idaho 439 (1929) (cited with approval in *Peterson v. Gentillon*, 154 Idaho 184, 189 (2013)).
[9] See R. Vol. I., p. 72.
[10] See R. Vol. I., p. 72.

rejected the City's invitation to construe the reference to "the state" to include "the state *and its political subdivisions.*" No such language exists in this section. Rather, the District Court properly noted that the Idaho Legislature "has also been careful to specifically identify the state *and* political subdivisions in certain legislation," having made this distinction several times even within the same Chapter 2, Title 5, Idaho Code.[11] Section 5-218 expressly refers to "the state of Idaho or any political subdivision thereof." Section 5-247 expressly defines "governmental unit" to include "[a] political subdivision of the state, including a municipality or county." As the District Court pointed out, "The statute at issue here, I.C. § 5-216, does not include such language. However, the City would have the Court read into § 5-216 such language based on the fact that some sections of the Idaho Constitution and the Idaho Code have included it."[12] Liberally construing the statute of limitations and strictly construing this exemption, the District Court correctly applied the plain language of Section 5-216.

The District Court also properly rejected the City's invitation to "harmoniously" construe Section 5-216 to include cities. The City argued that in *Bannock County v. Bell,* 8 Idaho 1 (1901), this Court liberally construed the term "state" in the statute of limitation in Section 5-225 to include all government subdivisions. Based on this liberal construction in applying the statute of limitation in Section 5-225 to a county, the City urged a "harmonious" interpretation of the exemption in Section 5-216 to treat the "state" as including the City. However, this proposed construction runs directly contrary to the express directive that only statutes of limitations (such

[11] See R. Vol. I., p. 73 (italics in original).
[12] See R. Vol. I., p. 73.

as Section 5-225) be construed liberally and that exemptions (such as Section 5-216) be construed strictly. *See Mendini v. Milner*, 47 Idaho 439, 276 P. 313, 314 (1929) (cited with approval in *Peterson v. Gentillon*, 154 Idaho 184, 189 (2013)). Section 5-225 liberally applies all of the statutes of limitations in Chapter 2, Title 5, to the state and its political subdivisions, whereas Section 5-216 carves out a narrow exemption for the state in actions on a written contract. There is nothing "jarring" or "unharmonious" in the District Court's holding.[13]

The District Court focused on the plain, unambiguous language in Section 5-216 and rejected the City's argument that the legislature had *intended* "the state" to include political subdivisions in Section 5-216, but had failed to actually include the language. The District Court cited to this Court for the rule that "where the question is whether the legislature inadvertently left language out of the statute, the missing language is not to be read into the statute by the courts."[14]

As further support for its conclusion, the District Court pointed out that the term "state" does not apply to political subdivisions under the Idaho Administrative Procedures Act. Likewise, the District Court would not construe the term "state" to include political subdivisions to extend the exemption provided in Section 5-216 to the City.[15]

The District Court also considered, and properly rejected, the City's argument that the phrase, "for the benefit of the state," includes the City. The City laced together an argument that because the City derived its authority from the state and sought to acquire HK's property for

[13] See p. 9 of Appellant's Brief.
[14] See R. Vol. I., p. 74 (citing *Saint Alphonsus Reg'l Med. Ctr. v. Gooding City*, 159 Idaho 84, 89 (2015)).

some future public purpose, which would benefit the citizens of Idaho Falls, who also happen to be citizens of the state of Idaho, then the City's claims should be treated as being brought "for the benefit of the state."[16] The District Court concluded that "[t]he City's argument is an attempt to circumvent the plain language of the statute" and "such a circumvention would result in any entity or person, in any capacity, avoiding the statute of limitations simply because it can trace a benefit of its claim to some resident of the state."[17] The District Court properly rejected the City's argument.

In considering the phrase, "for the benefit of the state," this Court's commentary in *Bevis v. Wright*, 31 Idaho 676, 175 P. 815 (1918), is helpful. In *Bevis*, a county resident and taxpayer challenged Nez Perce County's authority to impose a tax to be used to promote the products and industries of the county at exhibitions. Among other things, the taxpayer argued that the county tax was actually "for the benefit of the state," and therefore the tax should be made uniform throughout the state. This Court rejected that argument and concluded that "[w]hile the state at large might receive some benefit, the principal object sought to be obtained inures to the benefit of the county itself." 175 P. at 816. Here, the likelihood that the state might receive some benefit from the City's private contract for a gravel pit for storm water drainage for the Kensington Park subdivision is even more tenuous. Clearly, the "principal object" of the Storm Drainage Agreement inures to the benefit of the City, not to the state at large.

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[15] See R. Vol. I., pp. 74-75.
[16] See R. Vol. I., p. 75.
[17] See R. Vol. I., p. 76.

E. The City's Claims Are Not Exempt From The Limitations Period Under Any Common Law Theory.

In addition to the express exemption from the statute of limitations found in Section 5-216, this Court has recognized a common law exemption from the statute of limitations where the state, as trustee, is performing a high constitutional duty involving public property.

This Court applied this narrow exemption in *State v. Peterson*, 61 Idaho 50, 97 P.2d 603 (1939), allowing the state of Idaho's action to recover public monies loaned from the public school endowment fund created by the Idaho Constitution despite the running of the applicable statute of limitations. The Court reasoned this exemption from the statute of limitations was appropriate because "[t]he higher the sovereignty and the more sacred (not used in a religious sense) and public the function involved the greater the reason for immunity" from the statute of limitations defense. 97 P.2d at 605 (parenthetical in original). The claim in *Peterson* arose from "the ***state as trustee*** performing a ***high constitutional public duty***…the handling of [] public school funds." 97 P.2d at 606 (emphasis added). This Court did not bar the state's claim because "[t]he trust relationship here is of the highest order and should be protected to the utmost." *Id.* The state of Idaho is the highest sovereign. This particular duty was derived from the Constitution, the highest and most "sacred" source of duty. Under these unique circumstances, the Court exempted the claim from the statute of limitations.

The City attempted to analogize its private contract claims against HK to the state's high constitutional claim in *Peterson*, but the District Court easily and correctly distinguished the two. The *Peterson* case involved an action to recover money loaned to private individuals from the

constitutionally established public school endowment fund, whereas the City's action involves no transfer of public property at all. The District Court noted, "The City did not lend public money or property to H-K. In fact, the contract between the parties called for H-K's conveyance of it's [sic] own private property to the City."[18] By applying the statute of limitations to the City's claims, "H-K simply retains private property which it already owned, not public property the City holds in trust." HK never received any public property or public funds.

The *Peterson* case involved the highest sovereign (the state of Idaho) acting in a most sacred function (as constitutional trustee of public school endowment funds), compared to the City's claims in the present case, which involve one of the lowest sovereigns (a municipality) acting in one of the least sacred functions (a purely private contract). With no "trustee performing a high constitutional public duty," the common law exemption to the statute of limitations in *Peterson* does not apply to the City's claims.

Other examples rejecting any common law exemption from the statute of limitations and barring claims by governmental entities include actions to collect a transfer tax, to collect an inheritance tax, to recover fraudulently received public funds, and to recover fraudulently received unemployment benefits. *See White v. Conference Claimants Endowment Commission of the Idaho Annual Conference of the Methodist Church*, 81 Idaho 17 (1959); *Hagan v. Young*, 64 Idaho 318 (1942); *Bannock County v. Bell*, 8 Idaho 1, 65 P. 710 (1901); *Norton v. Department of Employment*, 94 Idaho 924, 926 (1972). If all these examples fall short of the "high

[18] See R. Vol. I., p. 77.

constitutional public duty" required to exempt claims from the statute of limitations, the City's private contractual claim to acquire a gravel pit from HK falls even shorter.

F. Public Policy Supports Application Of The Statute Of Limitations To Bar The City's Claims.

Public policy arguments come into play only where the statute is ambiguous and the court may then consider the reasonableness of the proposed construction, the public policy underlying the statute, and the legislative history of the statute. *See, e.g., KGH Development, LLC, v. City of Ketchum*, 149 Idaho 524, 528 (2010). Here, the District Court found Section 5-216 unambiguous,[19] so public policy is not a proper consideration. Nonetheless, the City offers several public policy arguments to support its proposed interpretation of Section 5-216, listing among its "parade of horribles," the need for cities to become more "aggressive, assertive, and perhaps litigious to protect the public's rights," resulting in waste of public resources.[20] However, these public policy considerations, if considered at all, are offset by the public policy supporting statutes of limitation, which includes "'protection of defendants against stale claims, and protection of the courts against needless expenditures of resources.' Statutes of limitation are designed to promote stability and avoid uncertainty with regards to future litigation." *Wadsworth v. Dept. of Transp.*, 128 Idaho 439, 442 (1996) (quotation omitted).

As further explained by the Supreme Court of the United States, "Statutes of limitations…are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have

died or disappeared, and evidence has been lost…They represent a public policy about the privilege to litigate." *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314, 65 S.Ct. 1137, 1142, 89 L.Ed. 1628 (1945)).

More directly, as the District Court explained, "It may be true that in certain scenarios, public policy would preclude a party from avoiding its contractual obligations. However, it is also long-held Idaho public policy to prevent a party who 'sleeps on his rights' from avoiding the application of the statute of limitations."[21]

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's order dismissing the City's complaint.

RESPECTIVELY SUBMITTED this 28th day of September, 2017.

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[19] See R. Vol. I., p. 75.
[20] See pp. 26-27 of Appellant's Brief.
[21] See R. Vol. I., p. 78 (quoting *Davis v. Consol. Wagon & Mach. Co.*, 43 Idaho 730, 254 P. 523, 524 (1927)).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of September, 2017, I caused a true and correct copy of the foregoing **RESPONDENT'S BRIEF** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

[ ] U.S. Mail
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[ ] Overnight Delivery
[XX] Hand Delivery
[ ] Courthouse Mail Box
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